THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 21453 of 2006

Dated: 15-11-2006

Between:

M/s. Sri Sai Wines,
Rep., by its Proprietor, Bommanahal Mandal,
Ananthapur District and two others.

..... PETITIONER

AND

The Commissioner of Prohibition and
Excise, Andhra Pradesh, Hyderabad and
three others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 21453 of 2006

O R D E R:

This writ petition is filed seeking a declaration that the action of the first respondent in according permission to fourth respondent to shift his shop from Govindawada to Devagiri is arbitrary and illegal.

The District Collector, Ananthapur District issued a notification dated 27-05-2006 inviting bids for grant of lease of right to sell Indian Made Foreign Liquor by shop under Rule 6 of the Andhra Pradesh Excise (Lease of Right of selling by shop and conditions of licence) Rules, 2005 (for short 'the Rules'). The petitioners as well as the fourth respondent had participated in the auction. Admittedly, the petitioners herein were declared as the successful bidders in respect of shops at Sl.No.158, 156 and 155 respectively and licences in form A-4 were granted to them on

03-07-2006. So far as the fourth respondent herein is concerned, he was declared as the highest bidder for shop at Sl.No.157 in Govindawada village and he was accordingly granted licence. However, subsequently, the fourth respondent seems to have made an application to the first respondent seeking permission for shifting his shop from Govindawada to Devagiri village. Having considered the same, the first respondent vide impugned proceedings dated 29-09-2006 accorded permission for shifting of the fourth respondent shop from Govindawada to Devagiri village. The said order is questioned in this writ petition contending *inter alia* that the impugned order is not only arbitrary and illegal but also is not in conformity with the provisions of the Rules.

I have heard the learned counsel for the petitioners and the learned Government Pleader for Prohibition and Excise appearing for respondents 1 to 3.

An identical question has been considered by this Court in W.P.No.17736 of 2006 and having regard to all the relevant provisions under the Rules, particularly sub-rule (3) of Rule 29 as amended by G.O.Ms.No.598 dated 26-05-2006, this Court held as under:

> *"It is to be noted that subsequent to the said order in W.P.No.26957 of 2005, sub-rule (3) of Rule 29 of the Rules was amended by G.O.Ms.No.598 dated 26.5.2006 inserting the proviso, which was extracted above. As already noted, the proviso empowers the Commissioner to permit shifting of the licensed premises within the same Mandal or Municipality or Municipal Corporation notwithstanding the notified area of the licensed premises. The said amendment came into force w.e.f. 26.5.2006, whereas the notification inviting tenders for auction of grant of lease by shop under Rule 5 of the Rules was issued subsequently on 27.5.2006. Hence, all the participants in the auction are bound by the amended rule and having participated in the auction without raising any objection, it is not open to them now to contend that the shifting of the shop from one Ward to another Ward would affect their business. So long as shifting is not effected within the Mandal or Municipality or Municipal Corporation and is not in violation of the other conditions specified under the proviso to rule 29(3), the petitioner cannot have any grievance. It is relevant to note that the validity of Rule 29(3), as amended by G.O.Ms.No.598 dated 26.5.2006, is not under challenge in this writ petition, but only the order passed in exercise of the said power is sought to be declared as arbitrary and illegal. Having regard to the power conferred under Rule 29(3), as it stood by the date of notification dated 27.5.2006, I am unable to hold that the impugned order dated 21.8.2006 is arbitrary or illegal on any of the grounds urged in the writ petition."*

In the case on hand, admittedly both the Govindawada and Devagiri villages are situated in Bommanahal Mandal. That apart the total number of notified shops in the said Mandal have not been affected by virtue of shifting of the licenced premises under the impugned order. Hence, the allegation that the impugned shifting was not in conformity with the statutory Rules is unfounded.

Accordingly, the writ petition, which is devoid of any merit, is hereby dismissed. No costs.

G. ROHINI, J

Dated: 15-11-2006
KLP